

EXHIBIT “A”

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF PENNSYLVANIA
3 - - -
4 TINA LINDQUIST, :
5 PLAINTIFF, :
6 -VS- : CASE NO. 04-249E
7 HEIM, LP, :
8 DEFENDANT. :
9 - - -
10 Deposition of DENNIS R. CLOUTIER, a
11 witness herein, taken by the plaintiff as upon
12 direct examination pursuant to the Federal Rules
13 of Civil Procedure and pursuant to agreement and
14 stipulations hereinafter set forth at the offices
15 of Dinsmore & Shohl, 1600 Chemed Center, 255 East
16 Fifth Street, Cincinnati, Ohio at 8:22 a.m. on
17 Tuesday, April 11, 2006, before Lisa Conley, RMR,
18 CRR, CCP, a notary public within and for the State
19 of Ohio, and by audio/visual means before Marlene
20 Dori, CLVS.
21 - - -
22
23
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1 standard, correct?

2 A. Yes, I have.

3 Q. And in your application of the B
4 11.3 standard, you understand how to interpret the
5 standard; am I correct?

6 A. Yes.

7 Q. And you would understand what is
8 permitted and what is not permitted; am I correct?

9 A. Yes.

10 Q. Would the gated foot control be
11 permitted under the B 11.3 standard for usage on a
12 press brake?

13 MR. ROBINSON: Objection to the
14 form, also asked and answered.

15 A. The previous answer stands. The
16 standard is silent on it, so industry is allowed
17 to interpret that however they wish. If somebody
18 uses a gate or doesn't use a gate, they're not
19 going to be in violation of the B 11.3 standard.

20 Q. If it was prohibited, the standard
21 would indicate so, correct?

22 A. Yes.

23 MR. ROBINSON: Objection to the
24 form of that question. I don't understand it.
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1 Q. You understand the question; don't
2 you?

3 MR. ROBINSON: That has nothing --
4 We went through this before. Anytime I raise an
5 objection, it doesn't mean that the witness
6 doesn't understand it or that the witness has a
7 problem with it, it's from me from a legal point
8 of view having problems with it.

9 MR. HARTMAN: I understand.

10 MR. ROBINSON: I know.

11 MR. HARTMAN: I understand your
12 legal thing.

13 MR. ROBINSON: You have a habit of
14 asking the witness if he understands the question
15 after my objection, and I don't want to be, as we
16 talked about before, misleading to you, and that's
17 not what I'm saying at all.

18 MR. HARTMAN: I understand that and
19 sometimes it might be, and I'm just trying to make
20 sure that this witness understands the question.

21 MR. ROBINSON: I understand.

22 BY MR. HARTMAN:

23 Q. You understood that question?

24 A. Repeat it just since there's an
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1 issue over it.

2 (The record was read back by the court reporter.)

3 BY MR. HARTMAN:

4 A. Yes.

5 Q. Does the B 11.3 standard prescribe
6 issues as to -- Strike that.

7 Does the B 11.3 standard prescribe
8 what features a foot control should have if it's
9 going to be incorporated on a press brake?

10 A. It provides general requirements for
11 foot controls.

12 Q. Okay. What are the general
13 requirements for foot controls that are to be
14 utilized on press brakes?

15 MR. ROBINSON: Objection to the
16 form.

17 A. Paraphrasing the language that's in
18 the standard, it essentially requires foot
19 controls that are protected against actuation from
20 falling objects or inadvertent actuation from
21 stepping upon it or stepping on the foot switch
22 or --

23 MR. ROBINSON: I didn't hear the
24 last part.

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1 A. -- foot control, inadvertent
2 operation from stepping on the foot control.

3 Q. Would a covered foot control meet
4 those requirements?

5 A. Yes.

6 Q. Is the covered foot control
7 permitted by the ANSI standard, the 11.3, for use
8 in conjunction with press brakes?

9 MR. ROBINSON: Objection to the
10 form.

11 A. The covered foot control is one type
12 of meeting the requirements of the standard.

13 Q. So, sir, would you agree that, if
14 you had a covered foot control with a gate, that
15 would be one type of meeting the requirements of
16 the standard?

17 MR. ROBINSON: Objection to the
18 form.

19 A. Yes.

20 Q. So a foot control that is covered
21 and has a gate would be one of the methods of
22 meeting the requirements of the standard for
23 incorporation of a foot control on a press brake?

24 MR. ROBINSON: Objection to the
 SPANGLER REPORTING SERVICES, INC.

1 form.

2 A. Yes. It would be the same as just a
3 covered foot pedal, foot switch.

4 Q. Would a covered foot switch with an
5 anti-trip latch be one method of meeting the
6 requirements of the standard for foot control
7 usage in conjunction with press brakes?

8 A. Yes, with or without the toe
9 release, the latch.

10 Q. So the ANSI standard is satisfied by
11 a covered pedal, correct?

12 A. As soon as you cover the pedal, the
13 standard is satisfied. If you go beyond that,
14 you've covered the pedal and the standard is
15 satisfied.

16 Q. So if you go beyond it, the standard
17 is still satisfied, correct?

18 A. Yes.

19 Q. Is the ANSI standard a value system
20 that you adhere to?

21 MR. ROBINSON: Objection to the
22 form.

23 A. Me, personally?

24 Q. Yes.
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1 think the B 11.3 standard provides the needed
2 guidance to make that machine safe for Tina
3 Lindquist on the day of her occurrence.

4 Q. So your opinion today as it relates
5 to the press brake that was involved with
6 Ms. Lindquist is, your analysis begins and ends
7 with regard to the safety issues with B 11.3?

8 MR. ROBINSON: Objection to the
9 form.

10 A. Yes.

11 Q. Are you aware of any manufacturer at
12 anytime in your 29 plus years with Cincinnati,
13 Incorporated that provided a gated foot control
14 with their press brake?

15 MR. ROBINSON: Objection to the
16 form.

17 A. Yes, at various times over the
18 years.

19 Q. Would you identify what
20 manufacturers you're aware of that provided gated
21 foot controls with their press brakes?

22 MR. ROBINSON: Object. You mean at
23 anytime?

24 MR. HARTMAN: During his 29 years.
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1 MR. ROBINSON: Okay. Objection to
2 the form.

3 BY MR. HARTMAN:

4 A. I believe Pacific provided a gated
5 foot switch later on. Cincinnati, Incorporated
6 provided gated foot switches. Chicago provided
7 gated foot switches. Amada provided or provides a
8 gated-type foot switch; that's A M A D A. I
9 believe LBD, just the letters L B D, provides a
10 gated-type foot switch; and possibly Trumpf, T R U
11 M P F, provides a gated-type foot switch.

12 Q. Are you aware of any of the
13 manufacturers of press brakes that you've just
14 named that provided gated foot controls with their
15 press brakes having done so in the period of 1971
16 to 1982?

17 MR. ROBINSON: Objection to the
18 form.

19 A. '71 to '82 would be Cincinnati,
20 Incorporated, it would be Chicago, it would
21 be -- That's all I can think of. I know there was
22 another one out there, I can remember the foot
23 switch, but I can't remember the press brake.

24 Q. Are you aware of any of the
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1 manufacturers of press brakes that you just
2 enumerated that included gated foot controls with
3 their press brakes still doing so, doing so today?

4 MR. ROBINSON: Objection to the
5 form.

6 A. Well, the only two that are left are
7 Pacific and Cincinnati, and both of them do, I
8 believe.

9 Q. Okay. Are you aware of a press
10 brake manufacturer that offers a gated foot
11 control as standard equipment with their press
12 brakes?

13 MR. ROBINSON: Objection to the
14 form.

15 A. I don't know about Pacific, whether
16 it's standard or not. I believe on some
17 Cincinnati machines it's standard.

18 Q. Do you know why on some Cincinnati
19 machines it would be standard and others it would
20 not be?

21 A. No.

22 Q. Have you ever had discussions with
23 the person responsible at Cincinnati as to why
24 they included gated foot controls with their press
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1 seen, the trap door has been removed or the spring
2 has been cut.

3 MR. ROBINSON: Or, I'm sorry?

4 A. Spring has been cut.

5 MR. ROBINSON: Thank you.

6 A. So the trap door lays flat and it's
7 out of the picture.

8 Q. Okay. And on the top-hinged ones
9 like the Linemaster 511 -- Is that what Cincinnati
10 utilized?

11 MR. ROBINSON: Objection to the
12 form.

13 A. Yes.

14 Q. Okay. Are you aware of
15 Cincinnati -- Did Cincinnati ever do a safety
16 alert or a recall notice or something to its -- to
17 the owners of its press brakes that they were now
18 offering gated foot controls?

19 A. Yes.

20 Q. Okay. And do you recall what those
21 safety alerts said?

22 MR. ROBINSON: Let me object to the
23 form, just the terms that you chose, I don't --
24 Let me just leave it at that.

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EXHIBIT "B"

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF PENNSYLVANIA

3 ORIGINAL

4 TINA LINDQUIST,)
5 Plaintiff,)
6 -vs-) No. 04-249E
7 HEIM, L.P.)
8 Defendant.)
9 The videotaped deposition of WILLIAM
10 SWITALSKI called for examination pursuant to Notice
11 and the Rules of Civil Procedure for the United
12 States District Courts pertaining to the taking of
13 depositions, taken before DEANNA AMORE, a notary
14 public within and for the County of Cook and State
15 of Illinois, at 33 North LaSalle Street, Chicago,
16 Illinois, on the 7th day of April, 2006, at the
17 hour of 8:00 a.m.

18
19 CSR No.: 084-0003999
20

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1

1 you what type of safety mechanisms to have, it
2 basically tells you a minimum standard of what it
3 wants?

4 MR. ROBINSON: Object to the form of that
5 question.

6 THE WITNESS: The standard states that the foot
7 control has to be protected against accidental
8 actuation and specifically must protect against
9 someone stepping onto the pedal which gave rise to
10 the requirement for at least a top shield.

11 ANSI was very specific -- or I should say the
12 code committee that wrote that was very specific
13 about using the word onto the pedal as opposed to
14 into the pedal. They recognized that normal use of
15 the foot control involved stepping into it. So
16 there is no way to prevent someone who accidentally
17 actuates it from stepping into it. So they use the
18 word accidental activation by stepping onto the
19 pedal, in other words, from above again, which gave
20 rise to the top shield.

21 The illustration of an acceptable foot control
22 that's used in the standard shows both a top shield
23 and side shields. It does not show a toe latch.
24 It does not show a front gate.

1 BY MR. HARTMAN:

2 Q. But if it had a toe latch or a front gate
3 and it had the cover to protect you from stepping
4 onto it, it would be an ANSI-approved shield?

5 MR. ROBINSON: Objection -- excuse me -- I will
6 object to the form of the question.

7 THE WITNESS: ANSI does not approve products
8 but it would certainly -- it would certainly
9 include all of the required features. I don't
10 think the committee would exclude the foot control
11 with additional features.

12 BY MR. HARTMAN:

13 Q. I am sorry. So it would be an ANSI, would
14 the term be, acceptable shield then?

15 A. Yes.

16 Q. So -- I am going to show you Exhibit
17 No. 4, which has shields from 1 to No. 12. I would
18 ask you to look at all of those shields.

19 A. All right.

20 Q. Is there any shield that's located in
21 Exhibit 1, 1 through 12 that would not be an
22 ANSI-acceptable shield?

23 A. There is not. There are no uncovered foot
24 switches shown in this publication.

1 A. Yes, as I said, it amounts to the physical
2 removal of the pedal from the machine when you
3 are -- when you are not operating.

4 Q. Well, how about during the operation of
5 the foot -- of the press brake with the foot pedal,
6 can you prevent accidental activation of the foot
7 pedal under those circumstances?

8 A. No, you can't.

9 Q. You cannot?

10 A. No, you can't.

11 Q. Now in 1973 do you know what mechanisms
12 were available by the foot control manufacturers
13 that would -- that could be used to prevent or
14 inhibit inadvertent activation of the pedal?

15 MR. ROBINSON: I will object to the form of the
16 question. You have included prevent and inhibit,
17 which is contrary to I think the testimony that was
18 just given.

19 MR. HARTMAN: I am sorry.

20 BY MR. HARTMAN:

21 Q. Okay. In 1973 do you know what foot
22 controls were available that would inhibit
23 accidental activation of the foot control?

24 A. Yes, I think we have already touched on

1 every one of these features, the top guard, the
2 side guards. I think Linemaster alone has the toe
3 latch, and eventually all of the major foot switch
4 manufacturers came out with some form of a front
5 gate.

6 Q. And the front gate was available in 1973
7 as well?

8 MR. ROBINSON: I am going to object -- is that
9 a question or is that just a statement?

10 BY MR. HARTMAN:

11 Q. Do you agree with that statement?

12 A. It was certainly available with some
13 manufacturers. I don't know the specific date that
14 all of the different manufacturers came out with
15 their version of front gate is unknown to me.

16 Q. But in 1973 the front gate was available
17 on foot controls by some manufacturers?

18 MR. ROBINSON: Object to the form. I will
19 object to the form of that question.

20 THE WITNESS: Yes.

21 BY MR. HARTMAN:

22 Q. And in 1977, 1978, the front gate was
23 available on a foot control manufactured by
24 Linemaster; am I correct?

1 A. Yes.

2 Q. And a foot control with a front gate would
3 be approved by ANSI, that ANSI standard that you
4 just read?

5 MR. ROBINSON: I will object. This has been
6 asked and answered. He said they don't approve for
7 certain things. All of this has been asked and
8 answered. You are now trying to get what you
9 couldn't get before from his answers into a quick,
10 well, let me just say it again, maybe he will say
11 yes. It is inappropriate.

12 MR. HARTMAN: I am not trying to do that.

13 MR. ROBINSON: That's the result that gets
14 reached if there is an answer that's inconsistent
15 with what he has already answered on. So let's
16 please ask some new questions.

17 MR. HARTMAN: Paul, I will ask whatever
18 questions I feel like asking. And if you have a
19 problem with my question -- every time you have
20 asked me to rephrase something, if the witness
21 hasn't understood it, I am more than willing to do
22 it. This is not about the sharp practice of law.
23 This is trying to find out --

24 MR. ROBINSON: Well, you and I disagree on the

1 manner in which some questions are asked. I am
2 raising a very valid objection. These questions
3 have been asked and answered, many of them multiple
4 times. And all I am asking, for purposes of the
5 Court really, because I know that you are going to
6 ask whatever you want, is that we begin to address
7 some new areas.

8 MR. HARTMAN: Okay.

9 BY MR. HARTMAN:

10 Q. Is there a difference between something
11 that's acceptable by ANSI and something that's
12 ANSI-approved, that would be approved by ANSI?

13 A. Well, as I think I touched on before, ANSI
14 doesn't approve anything. I think where we are
15 going with this, I can say that there is nothing in
16 the ANSI standards that would disallow the use of a
17 foot control with a front gate.

18 Q. Looking at Switalski Exhibit No. 4,
19 and I am asking you to compare the Linemaster with
20 the anti-trip mechanism that's shown in exhibit --
21 is in Drawing No. 8 with the Linemaster Hercules
22 foot control that's in Exhibit No. 4.

23 A. All right.

24 Q. Can you look at those, please?

1 Q. Is that a reasonable value system?

2 A. Yes.

3 Q. Is that a value system that you have ever
4 used?

5 A. I don't know that I have been in the
6 position to have to choose whether or not to
7 include a new proposed safety device other than in
8 the framework of litigation matters like we are
9 doing here today.

10 But, yes, I would say I have used it
11 because in effect that's what I am doing with
12 regard to the front gate that Barnett is proposing
13 for press brake foot controls.

14 BY MR. HARTMAN:

15 Q. Okay. What is the cost of the front gate?

16 A. I don't know.

17 Q. No. I am saying what is the cost that you
18 factored in?

19 A. What is the cost -- I haven't factored in
20 any cost.

21 Q. Okay. What is the benefit of the front
22 gate?

23 A. The benefit of the front gate is that it
24 will reduce the likelihood of inadvertently

1 stepping into a foot control.

2 Q. Okay. On page 9, Item No. 2, the last
3 sentence of your report, you indicate it is not
4 possible to prevent someone from inadvertently
5 stepping into the pedal when the intended use of
6 the pedal involves stepping on it. This holds true
7 for the proposed front gate. Its use is not a
8 guarantee that an inadvertent activation will not
9 or cannot occur.

10 Would I be correct in indicating that
11 there is no guarantee with any safety device that
12 injury will not occur?

13 A. Yes, that is true. And I think it is
14 especially true for the foot switch gate because
15 intending to activate the foot switch involves in
16 effect getting past that gate.

17 Q. But if you are not intending to activate
18 the foot switch and somehow your foot gets in
19 there, the gate does protect you if there is no
20 intent?

21 MR. ROBINSON: I will object to the form.

22 THE WITNESS: If you are not intending to
23 activate the foot switch and your foot gets in,
24 then by definition the gate hasn't protected you.

1 yes.

2 Q. Okay. So if the gate is on the foot
3 pedal -- strike that.

4 If the gate is on the foot control and
5 Ms. Lindquist's foot is outside of the foot control
6 and the gate does what it is intended to do, which
7 is prevent unintended entrance into the foot
8 control, would you agree this accident wouldn't
9 have occurred?

10 MR. ROBINSON: I will object to the form of
11 that question.

12 THE WITNESS: Yes.

13 BY MR. HARTMAN:

14 Q. And on paragraph 8 on page 10, would it be
15 a fair statement -- I think I have asked you this
16 -- but would it be a fair statement to say that you
17 don't know what model foot control came with this
18 machine at the time it was sold in 1978?

19 A. Yes.

20 Q. Did you see anything in all of the
21 depositions that led you to believe -- that
22 indicated that Ms. Lindquist was riding the foot
23 pedal at the time of this accident?

24 A. No, I saw no specific indicators that she